



11 CFR Part 113

[NOTICE 2021-07]

Rulemaking Petition: Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition; notification of availability.

SUMMARY: On March 23, 2021, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend its existing regulations regarding candidate salaries and permissible uses of campaign funds. The proposed amendments would: extend the period during which a candidate can draw a salary from campaign funds; establish a minimum salary for candidates from campaign funds; and designate the payment of certain healthcare costs as permissible uses of campaign funds. The Commission seeks comment on the petition.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG 2021-01.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any

information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Rothstein, Assistant General Counsel, or Mr. Kevin Paulsen, Attorney, Office of the General Counsel, at CandidateSalaries@fec.gov.

SUPPLEMENTARY INFORMATION: On March 23, 2021 the Commission received a Petition for Rulemaking from Nabilah Islam (“Petition”). The Petition asks the Commission to amend 11 CFR 113.1(g), which, in part, lists certain permissible and impermissible expenses for which campaign funds may and may not be used and sets forth the conditions under which candidates may pay themselves a campaign salary. Petition at 1. Each of the Petition’s proposals is addressed in turn below.

A. Candidate Salary Period

Existing Commission regulations permit candidates to draw salaries from their principal campaign committees using campaign funds, subject to certain conditions. 11 CFR 113.1(g)(1)(i)(I). If these conditions are met, an eligible candidate may begin receiving a campaign salary on the date of “the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by state law, or in those states that do not conduct primaries, on January 1 of each even-numbered year.” *Id.* “If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff.” *Id.* If, however, the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary may be paid beyond the date he or she is no longer a candidate. *Id.* In odd-numbered years in which a special election for a Federal office occurs, the candidate’s principal campaign committee may pay him or her a salary from the date the special election is set through the date of the special election. *Id.*

The Petition asserts that ballot access deadlines for state primaries “vary wildly based on state law.” Petition at 3-4. According to the Petition, during the 2018 election cycle, the date on which a candidate could begin drawing a campaign salary under Commission regulations “ranged from December 4, 2017 in Illinois to July 10, 2018 in Delaware, a difference of 218 days.” *Id.* at 4. The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) to “standardize and expand the ability for candidates to draw a salary” from their campaigns. *Id.* The Petition proposes that the regulations be amended to permit a candidate to begin drawing a campaign salary “*at least* 180 days before the primary election, but a full year would be optimal.” *Id.* (emphasis in original).

B. Minimum Candidate Salary

The same provision of the Commission’s existing regulations limits the amount of salary payments that a candidate may receive from his or her principal campaign committee. 11 CFR 113.1(g)(1)(i)(I). Under the regulation, salary payments may not exceed “the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate.” *Id.* The regulation further states that “[a]ny earned income that a candidate receives from salaries or wages from any other source shall count against the foregoing limit of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks.” *Id.* Any salary payments must also “be computed on a pro-rata basis.” *Id.*

The Petition alleges that the current maximum salary limitation “leaves candidates who are full time caretakers or who have had gaps in employment out in the cold.” Petition at 4-5. The Petition asks the Commission to amend 11 CFR 113.1(g)(1)(i)(I) by creating a minimum “floor” for the salary that a candidate may draw from his or her principal campaign committee at an amount “no less than the annualized salary of \$15 per hour.” *Id.*

C. Healthcare Premiums

The Federal Election Campaign Act, 52 U.S.C. 30101-45 (“FECA”), provides that a candidate’s authorized committee may use its funds for several specific purposes, including “otherwise authorized expenditures in connection with the campaign for Federal office of the candidate.” 52 U.S.C. 30114(a)(1). An authorized committee may not, however, convert campaign funds to “personal use.” 52 U.S.C. 30114(b); 11 CFR 113.1(g)(1)(ii). FECA defines “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign.” 52 U.S.C. 30114(b)(2); *see also* 11 CFR 113.1(g). FECA and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute per se conversion to personal use. 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i). For expenses not listed, the Commission determines on a case-by-case basis whether the expense would exist irrespective of the candidate’s campaign. 11 CFR. 113.1(g)(1)(ii). Neither FECA nor Commission regulations explicitly address health insurance premiums.¹

The Petition alleges that rising healthcare costs act as a barrier to the prospective candidacies of “working class people.” Petition at 5. Accordingly, the Petition asks the Commission to amend 11 CFR 113.1(g) to expressly permit a candidate to use campaign funds to pay the costs of “any health benefit plan already provided to other campaign employees” beginning on the date on which the candidate is eligible to receive a campaign salary.² *Id.* The Petition also requests that such amendment “clarify that any

¹ As the Petition notes, the Commission recently determined in the context of an enforcement matter that the existing candidate salary provision at 11 CFR 113.1(g)(1)(i)(I) does not permit the use of campaign funds to reimburse a candidate’s out-of-pocket payments of health insurance premiums. *See Factual & Legal Analysis* at 10, MUR 7068 (Mowrer for Iowa, *et al.*) (Dec. 20, 2017), <https://www.fec.gov/files/legal/murs/7068/18044452908.pdf>. The Commission further concluded that the candidate’s use of campaign funds to pay his health insurance premiums was a prohibited “personal use” under 11 CFR 113.1(g)(1)(ii), because these expenses would exist irrespective of the candidate’s campaign. *Id.*

² The For the People Act of 2021, which was passed by the House of Representatives this year, would amend Section 30114 of FECA to expressly permit the use of a candidate’s authorized committee’s funds to pay for the candidate’s health insurance premiums. For the People Act of 2021, H.R. 1, 117th Cong.

payments for health insurance premiums that are not otherwise taxable under Internal Revenue Service rules should not count against any compensation cap set by the Commission.” *Id.*

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission’s website at <http://sers.fec.gov/fosers/>.

The Commission will not consider the Petition’s merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the *Federal Register*.

Dated: April 23, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner,

Federal Election Commission.

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§ 5302 (2021). If this legislation becomes law, the Petition notes that this particular aspect of the request would become moot.